

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tileyah Williams	Team: Squad #03	CCRB Case #: 202202061	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 03/17/2022 9:46 AM	Location of Incident: § 87(2)(b)	18 Mo. SOL 9/17/2023	Precinct: 13
Date/Time CV Reported Thu, 03/17/2022 7:47 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 04/01/2022 2:21 PM

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT David Yan	01630	946402	013 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Nikoy Wallace	25344	963319	013 PCT
2. PO Sonia Hazel	01360	970590	013 PCT
3. PO Mayela Arthur	26964	950025	013 PCT
4. PO Princesse Cadoo	08050	963424	013 PCT
5. PO Angela Villota	04206	939810	013 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT David Yan	Abuse: Sergeant David Yan entered § 87(2)(b) in Manhattan.	§ 87(2)(g), § 87(4-b)
B.SGT David Yan	Force: Sergeant David Yan used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
C.SGT David Yan	Force: Sergeant David Yan used a chokehold against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
D.SGT David Yan	Abuse: Sergeant David Yan forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)

### Case Summary

On March 17, 2022, § 87(2)(b) filed this complaint over the phone with IAB generating original log number § 87(2)(b).

On March 17, 2022, prior to 9:46am, § 87(2)(b) mother, § 87(2)(b) and her physical therapist, § 87(2)(b) called 911 and reported that § 87(2)(b) had taken a lot of pain medication and was trying kill himself inside his apartment at § 87(2)(b) in Manhattan. Sergeant David Yan, Police Officer Princesse Cadoo, Police Officer Nikoy Wallace and Police Officer Sonia Hazel, all of the 13<sup>th</sup> Precinct, responded. Under the authority of Sgt. Yan, the officers entered § 87(2)(b) home with EMTs and decided that he needed to be removed to the hospital (**Allegations A and D: Abuse of Authority, § 87(2)(g)** Sgt. Yan decided to handcuff § 87(2)(b) who did not immediately comply. Sgt. Yan punched § 87(2)(b) in his face to gain compliance (**Allegation B: Force, § 87(2)(g)** He contacted § 87(2)(b) neck several times during the incident (**Allegation C: Force, § 87(2)(g)** § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

The investigation obtained body-worn camera videos from all the officers who responded (**01, 02, 03 Board Review**).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant David Yan entered § 87(2)(b) in Manhattan.**

**Allegation (B) Force: Sergeant David Yan used physical force against § 87(2)(b)**

**Allegation (C) Force: Sergeant David Yan used a chokehold against § 87(2)(b)**

**Allegation (D) Abuse of Authority: Sergeant David Yan forcibly removed § 87(2)(b) to the hospital.**

§ 87(2)(b) testified that on March 17, 2022, prior to 9:46 a.m., she was visiting her physical therapist, § 87(2)(b) (**04 Board Review**). § 87(2)(b) received a Facetime call from § 87(2)(b) who told her that he did not want to live anymore and that he had taken enough pills to take his life. § 87(2)(b) called 911 and reported § 87(2)(b) location and that he said he did not want to live and had taken pills. § 87(2)(b) and § 87(2)(b) then left the physical therapy office and took the subway to § 87(2)(b) location. When § 87(2)(b) arrived at § 87(2)(b) apartment, she saw that EMTs, and officers were in the kitchen with § 87(2)(b) who was handcuffed. § 87(2)(b) face was bloodied on his nose, lip and chin, though she could not see where the blood was coming from. § 87(2)(b) was taken to an ambulance and she rode in the ambulance with him to § 87(2)(b) Hospital in Manhattan. § 87(2)(b) needed to have his lip stitched.

§ 87(2)(b) testified that at approximately 8:30 a.m., he made calls to his parents and told them that he, “can’t do this,” making threatening statements against his life (**05 Board Review**). § 87(2)(b) could not remember how the officers gained entry to his apartment. § 87(2)(b) could not recall whether he walked to his bedroom and sat on the bed once Sgt. Yan and PO Wallace arrived or whether he was sitting on the bed and officers met him there. There were also two to three EMTs with the officers. When the officers asked him what happened, he told them that before they arrived, he said that he “could not do this

anymore,” because he could not. An EMT then told § 87(2)(b) that he had to go to the hospital and one of the officers reiterated this. § 87(2)(b) was hesitant to go to the hospital because he wanted to remain within the comfort of his own home. § 87(2)(b) then told officers that he did not mean what he said about, “can’t do this.” § 87(2)(b) did not believe that he outright refused to go to the hospital but instead tried to talk himself out of having to go. The officers then told § 87(2)(b) to put his arms behind his back. Sgt. Yan and PO Wallace began placing § 87(2)(b) arms behind his back and § 87(2)(b) asked them why. § 87(2)(b) did not understand why he was being handcuffed because when he was removed to the hospital before, he was not handcuffed. § 87(2)(b) sat on his bed and did not recall whether officers had gotten one or both handcuffs on him but while his arms were behind his back, Sgt. Yan used a closed fist to punch § 87(2)(b) on his top lip causing him to bleed. § 87(2)(b) could not recall anything that happened after that and just remembered arriving at § 87(2)(b) Hospital in Manhattan. He needed to get five to six stitches because of the punch.

§ 87(2)(b) did not provide the investigation with signed HIPAA forms (see IAs for attempts). Photos provided to the investigation by § 87(2)(b) show that § 87(2)(b) is in the hospital and has a deep open gash on the right side of his upper lip (**06 Board Review**).

NYPD 911 communications for EVENT § 87(2)(b) records § 87(2)(b) reporting that § 87(2)(b) took a lot of pain medication and tried to kill himself (**07 Board Review**). The radio communications recorded the central dispatcher relaying this information to officers and noted that he did not have a violent history (**07 Board Review**).

PO Wallace’s BWC recording shows that starting at the beginning, § 87(2)(b) is lying on his bed with the covers over him (**02 Board Review**). When the audio begins, § 87(2)(b) explains that his mother was mentally unstable and lied about him being suicidal. The EMTs are checking § 87(2)(b) vitals. Sgt. Yan is in the bedroom, standing near PO Wallace. At 9:26 minutes, one of the female EMTs tells § 87(2)(b) that they must take him to the hospital. § 87(2)(b) then speaks with the EMTs about what will happen when he goes to the hospital. Initially he agrees to go, but at 10:47 minutes, § 87(2)(b) says that he does not want to go anywhere. A female EMT explains that he is going. At 12:35 minutes, Sgt. Yan pulls the covers off § 87(2)(b) as they try to get him ready to leave for the hospital and § 87(2)(b) asks him to stop. At 12:50 minutes, § 87(2)(b) sits himself up and stands up. § 87(2)(b) begins getting dressed. At 14:59 minutes, § 87(2)(b) says that he is looking for a loose long green pill. At 15:30 minutes, a female EMT says that she found the pill, but that § 87(2)(b) could not take it. § 87(2)(b) says that it is his Xanax and that he is having an anxiety attack and needs it because he was having a panic attack. The EMT says that he cannot take it and at 16:00 minutes, § 87(2)(b) opens a drawer and asks the EMT to leave the pill in the drawer. At 16:02 minutes, Sgt. Yan says that they are going to handcuff § 87(2)(b). Sgt. Yan walks on top of § 87(2)(b) mattress and approaches § 87(2)(b). § 87(2)(b) repeatedly asks officers why they are cuffing him and says that he does not need to be cuffed. At 16:26 minutes, he asks officers to please stop and that he will comply. Sgt. Yan and PO Wallace are touching § 87(2)(b) arms and trying to get them behind his back. At 16:39 minutes, PO Wallace is attempting to get § 87(2)(b) right arm, but § 87(2)(b) kept it bent to the side of his body. At 16:30 minutes, the angle shows that PO Cadoo is reaching for § 87(2)(b) right arm. At 16:48 minutes,

§ 87(2)(b) falls to his bed, and it is unclear how he gets there. § 87(2)(b) tells the officers to stop and that he will comply. Officers tell him to stop resisting. § 87(2)(b) is now on his back and rolling over on his bed.

PO Cadoo's BWC recording shows that at 16:26 minutes, when § 87(2)(b) turns over to being back down on his bed, Sgt. Yan places his left open palm on the lower half of § 87(2)(b) face (**03 Board Review**). § 87(2)(b) extended right arm touches Sgt. Yan's left side and then immediately places his right arm near Sgt. Yan's armpit. The video does not clarify whether § 87(2)(b) grabbed onto Sgt. Yan's belt or any items on his belt. At the same time stamp, Sgt. Yan raises his right fist above his head, moves his left hand from the vicinity of § 87(2)(b) face and punches § 87(2)(b) in his face with his right fist. § 87(2)(b) yells asking why he was punched. § 87(2)(b) body turns over so that he is lying on his stomach. The recording shows several timestamps where Sgt. Yan's hands are in the vicinity of the back of § 87(2)(b) neck (16:30 minutes, 16:43 minutes and 17:11 minutes). The view shows that PO Cadoo is holding § 87(2)(b) right arm in place with PO Wallace, while Sgt. Yan gets § 87(2)(b) left arm from hanging over the bed to behind his back. At 17:14 minutes, officers have connected two sets of handcuffs together which are connected on one end to § 87(2)(b) right arm. They get him handcuffed at 17:40 minutes. Officers then escort him to the ambulance parked outside of his building.

Sgt. Yan's BWC was recording during the incident, however the actions of § 87(2)(b) and Sgt. Yan were more clearly depicted in the aforementioned videos (Board Review 01).

Sgt. Yan testified that when they arrived at § 87(2)(b) door, they knocked on it and announced that they were the police (**08 Board Review**). § 87(2)(b) opened the door and told Sgt. Yan to come in. EMTs responded to the location at the same time as him. § 87(2)(b) immediately proceeded to his bedroom door, opened it, got into his bed, and put a blanket over himself. Sgt. Yan described § 87(2)(b) as being 6'4" tall and about 350+ pounds. Sgt. Yan said that § 87(2)(b) spoke slowly and slurred his speech, had watery eyes which all led him to believe that § 87(2)(b) was under the influence of something, though he could not determine what he was under the influence of. § 87(2)(b) opened a drawer and Sgt. Yan did not know what was in the drawer and whether there was a gun, knife, weapon or more pills that § 87(2)(b) wanted to consume. For his own safety and the safety of the EMTs, and the safety of the other officers, Sgt. Yan decided to handcuff § 87(2)(b).

Sgt. Yan testified that § 87(2)(b) resisted the handcuffs by asking why he was being handcuffed, tensing, and locking his arms and flailing his arms (**08 Board Review**). As officers tried to put handcuffs on him, he spun around and fell backwards on his bed. Officers did not do anything to get him onto the bed. When § 87(2)(b) fell, Sgt. Yan was holding onto his arm and began falling with him. To prevent himself from falling, he placed his hand on § 87(2)(b) jaw but did not apply pressure. He said that his hand was not on § 87(2)(b) neck. Sgt. Yan felt § 87(2)(b) tugging on the left side of his gun belt, which contains his OC spray, Taser, magazine pouches, handcuffs, and radio. Sgt. Yan did not want § 87(2)(b) to grab any of the items from his belt and decided to do a hand strike to gain compliance from § 87(2)(b) and defend himself. He struck him in his face, though he did not recall whether he did so with an open hand or closed fist. Sgt. Yan hit him in his

face because he needed to match § 87(2)(b) force and his face was the only target that was available in front of him. He noted that he was in too close of a proximity to § 87(2)(b) to use any of the other tools on his gun belt. Sgt. Yan noticed that he sustained swelling, redness and bruising to his hand. On the date of his interview, Sgt. Yan noted that he still had a bump protruding from his right wrist from the incident. Sgt. Yan said that there was no point during the incident where contacted § 87(2)(b) neck. After reviewing PO Cadoo's BWC recording during his interview, he maintained that he did not contact § 87(2)(b) neck and was touching the back of his head. He noted that § 87(2)(b) never demonstrated difficulty breathing.

People v Desmarat, 38 A.D.3d 913 [2d Dept 2007], notes that officers may enter a premise without a warrant if they have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life, and there is reasonable basis to associate the emergency with the place being entered (**09 Board Review**).

Patrol Guide Procedure 221-13 notes that officers should remove an emotionally disturbed person (a person who appears to be temporarily deranged or mentally ill and is conducting themselves in a manner which a police officer believes is likely to result in serious physical injury to themselves or others) to the hospital in an ambulance (**10 Board Review**). It further notes that an emotionally disturbed person may be restrained with equipment such as handcuffs, if they are violent, resisting or when advised to do so by a physician examiner. The procedure notes that the primary duty of all members of the service is to preserve human life. The safety of all persons involved is paramount in cases involving emotionally disturbed persons. If such person is dangerous to himself or others, force may be used when it is reasonable to prevent serious physical injury or death. Members of the service will use only the reasonable force necessary to gain control or custody of a subject. When there is time to negotiate, all the time necessary to ensure the safety of all individuals will be used.

Patrol Guide Procedure 221-01 outlines the factors that officers should consider in determining whether force is reasonable (**11 Board Review**). These factors include: a. The nature and severity of the crime/circumstances b. Actions taken by the subject c. Duration of the action d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders e. Whether the subject is actively resisting custody f. Whether the subject is attempting to evade arrest by flight g. Number of subjects in comparison to the number of MOS h. Size, age, and condition of the subject in comparison to the MOS i. Subject's violent history, if known j. Presence of hostile crowd or agitators k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence. Patrol Guide Procedure 221-02 says that officers must not act in a manner which would compress the diaphragm or reduce a subject's ability to breathe (**12 Board Review**). Officers should assess the situation continually and adjust the use of force as necessary.

The investigation was unable to determine whether § 87(2)(b) provided voluntary consent for officers to enter his home. § 87(2)(g)

§ 87(2)(g) The Patrol Guide notes that when an individual has conducted themselves in a manner which is likely to cause physical harm to themselves, officers must remove them to the hospital. § 87(2)(g)

Sgt. Yan determined to handcuff § 87(2)(b) for the safety of all persons present. The Patrol Guide states that officers should use reasonable force to gain control or custody of an individual. When officers attempted to put § 87(2)(b) in handcuffs, and he resisted, § 87(2)(g)

When § 87(2)(b) fell onto his bed, the footage shows that § 87(2)(b) arm goes within the vicinity of Sgt. Yan's belt, but for less than a second. By the time that Sgt. Yan raises his fist to strike § 87(2)(b) § 87(2)(b) hand is no longer near his belt. Sgt. Yan's punch caused significant injury to § 87(2)(b) required stitches, and lasting injury to Sgt. Yan's wrist. Given the briefness of § 87(2)(b) arm at Sgt. Yan's belt, the presence of numerous other officers, and the nature of the force used, § 87(2)(g)

BWC footage showed several instances of Sgt. Yan placing his hands near § 87(2)(b) neck, but Sgt. Yan denied that he contacted § 87(2)(b) neck. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**15 Board Review**).
- Sgt. Yan has been a member of service for 14 years and has been a subject in one other CCRB complaint and three other allegations, none of which were substantiated.

- Case 202202173 involves two allegations of physical force. This investigation is still active.

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of October 19, 2022, the NYC Office of the Comptroller does not have any record of a Notice of Claim regarding this incident (**16 Board Review**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

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Squad: \_\_\_\_\_ 3 \_\_\_\_\_

Investigator: \_\_\_\_\_ Tileyah Williams \_\_\_\_\_ Investigator Tileyah Williams \_\_\_\_\_ 2/1/2023 \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_ Rolando Vasquez \_\_\_\_\_ IM Rolando Vasquez \_\_\_\_\_ 2/1/2023 \_\_\_\_\_  
Signature Print Title & Name Date